## AT: Hate Speech CP

#### Permutation, do the counterplan. Hate speech isn’t protected due to the “Fighting words” doctrine

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Speech codes have emerged from this constitutional milieu. They are the most controversial ways in which universities have attempted to strike a balance between expression and community order. Many major universities have introduced these codes to deal especially with so-called hate speech; that is, utterances that have as their object groups and individuals that are identified on the basis of race, ethnicity, gender or sexual orientation. Beginning in the 1980s, a variety of studies, including one by the Carnegie Foundation for the Advancement of Teaching titled “Campus Tensions,” highlighted instances of racial hatred and harassment directed at racial minorities. Over the past two decades the harassment has grown to include gays and lesbians, women and members of other ethnic groups. On several campuses white students have worn blackface for sorority and fraternity parties. On one campus a flier was distributed that warned: “The Knights of the Ku Klux Klan Are Watching You.” Many campuses responded to such actions by adopting policies that officially banned such expression and made those found guilty of engaging in it susceptible to punishments ranging from reprimands to expulsion. The idea, of course, was to chill the environment for such expression by punishing various forms of speech based on either content or viewpoint. These codes found strong support from some administrators, faculty and students who were convinced that by controlling speech it would be possible to improve the climate for racial and other minorities. The assumption behind the codes was that limiting harassment on campus would spare the would-be victims of hate speech psychological, emotional and even physical damage. The supporters of such codes also argued that they represented good educational policy, insisting that such bans meant that the learning process on campus would not be disrupted and that the concept of rational discourse, as opposed to hate-inspired invective and epithet, would be enshrined. In developing these codes, university administrators relied on a well-known Supreme Court doctrine — i.e., the “fighting words” exception developed in the 1942 decision Chaplinsky v. New Hampshire. Justice Frank Murphy, writing for a unanimous court, found that Walter Chaplinsky had been appropriately convicted under a New Hampshire law against offensive and derisive speech and name-calling in public. Murphy developed a two-tier approach to the First Amendment. Certain “well-defined and narrowly limited” categories of speech fall outside the bounds of constitutional protection. Thus, “the lewd and obscene, the profane, the libelous,” and insulting or “fighting” words neither contributed to the expression of ideas nor possessed any “social value” in searching for truth. While the Supreme Court has moved away from the somewhat stark formation given the fighting-words doctrine by Justice Murphy, lower courts have continued to invoke it. More important, universities have latched on to it as a device by which to constitutionalize their speech codes. The University of California in 1989, for example, invoked the fighting-words doctrine specifically, and other institutions of higher learning have done the same. Some institutions have recognized that the protean and somewhat vague nature of the fighting-words doctrine had to be focused. In 1990 the University of Texas developed a speech code that placed emphasis on the intent of the speaker to engage in harassment and on evidence that the effort to do so had caused real harm. Still other institutions, most notably the University of Michigan, attempted to link their speech codes to existing policies dealing with non-discrimination and equal opportunity. That tactic aimed to make purportedly offensive speech unacceptable because it had the consequence of producing discriminatory behavior.